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OFFICE OF PETITIONS

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In re Patent of Schwartzman et al
Patent No. 7,587,746
Issued: September 8, 2009
Application No. 09/846,849
Filed: May 2, 2001
Docket No. CISCP203/60241

: DECISION ON REQUEST
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed October 29, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred seventy-nine (1,579) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred seventy-nine (1,579) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on May 3, 2004 and ends on November 16, 2006, the day before the RCE was filed, and is 928 (not 929) days. Further, 91 days are excluded as appellate period beginning on the date the Notice of Appeal was filed, August 18, 2006, and ending on the day before the RCE was filed, November 16, 2006. There is an overlapping period of 387 days, not 478 days, beginning on August 2, 2004, the day after 36 months from the filing date plus the number of days excluded, and ending on August 23, 2005, the date the first action on the merits was mailed. *See* 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1,578, not 1,579 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

Pursuant to patentees' authorization, deposit account no. 50-4480 is being charged the required \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand five hundred seventy-eight (1,578) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,587,746 B1

DATED : September 8, 2009

DRAFT

INVENTOR(S) : Schwartzman et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1128 days

Delete the phrase "by 1128 days" and insert – by 1578 days--